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Supreme Court, U.S.
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No. 97-1550

In The

Supreme Court of the United States

October Term, 1997

GUADALUPE ROJAS,

Petitioner,

vs.

LAWRENCE FITCH, *et al.*,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the First Circuit

BRIEF IN OPPOSITION FOR RESPONDENT THE SALVATION ARMY

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THE SALVATION ARMY'S STATEMENT OF THE QUESTION PRESENTED

Respondent, The Salvation Army, respectfully submits that the three questions presented by the Petitioner, Guadalupe Rojas ("Ms. Rojas"), are simply variations of the one issue in this case:

> Does the denial of unemployment benefits to a former employee of The Salvation Army on the ground that The Salvation Army as a church is exempt from unemployment contributions under the Federal Unemployment Tax Act and Rhode Island's Employment Security Act violate the Establishment Clause of the First Amendment?

STATEMENT PURSUANT TO RULE 29.6

The Salvation Army is a not-for-profit corporation organized without stock. There is no parent entity to The Salvation Army, and no entity is subsidiary to it.

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STATEMENT OF THE CASE

This case arises from the denial of unemployment benefits to Ms. Rojas by the Rhode Island Department of Employment and Training ("DET") on the grounds that her former employer, The Salvation Army, had been granted an exemption as a "church" from contributing a percentage of its payroll to the Rhode Island unemployment compensation tax fund pursuant to Section 3309(b) of the Federal Unemployment Tax Act (26 U.S.C. §§ 3301-3311) ("FUTA") and the Rhode Island Employment Security Act codified at Section 28-42-8(1)-(14) of the Rhode Island General Laws ("R.I.G.L."). These exemptions, applicable to a variety of institutions and individuals, not just to churches, serve a valid secular purpose in facilitating the administration of the federal-state unemployment insurance program, do not have the purpose or effect of advancing or inhibiting religion and avoid unnecessary entanglement by government in the activities of religions. The First Circuit's decision upholding the constitutionality of the exemptions falls squarely within this Court's Establishment Clause precedents including the decision last term in *Agostini v. Felton*, __ U.S. __, 117 S. Ct. 1997 (1997).

A. Factual Background

1. *The Salvation Army*

The Salvation Army was founded in 1865 as an international religious and charitable movement organized and operated on a quasi-military basis. The Salvation Army is a Christian church, with a recognized creed and form of worship, a definitive ecclesiastical government, a formal doctrine and code of discipline, a distinct religious history, a membership not associated with any other church or denomination, and ministers selected after completion of prescribed courses of study

who minister to those who come to The Salvation Army in search of spiritual and physical help. The Salvation Army has its own literature, established places of worship, regular religious services, Sunday schools for the religious instruction for both youths and adults, and schools for preparation of its ministers.

As a necessary and fully integrated part of its religious mission, The Salvation Army conducts rehabilitation programs for the spiritually disassociated members of society. It is a fundamental tenet of The Salvation Army that, before a person can truly receive and accept spiritual guidance, the physical needs of the person must be ministered to. For this purpose, The Salvation Army maintains shelters for the homeless, rehabilitation programs for substance abusers, soup kitchens, day care and camps for children, as well as a host of other charitable services, all aimed at restoring those in need to a sense of personal worth and dignity. The activities of The Salvation Army in Rhode Island include all of these services, an inseparable part of the mission and organization of The Salvation Army.

Both the federal government and the government of the State of Rhode Island have determined that The Salvation Army is a church. By determination dated October 10, 1955, the Internal Revenue Service ("I.R.S.") of the United States Treasury Department determined that The Salvation Army constitutes a church, or a convention or association of churches for purposes of the Internal Revenue Code ("I.R.C."). Based on the I.R.S. determination, in 1987 the State of Rhode Island determined that The Salvation Army was a church and therefore an employer entitled to the exemption provided in R.I.G.L. Section 28-42-8.

2. *The Applicable Statutes*

The Rhode Island Employment Security Act is part of a cooperative federal-state program administered under FUTA.[1] FUTA imposes a federal excise tax on covered employers for unemployment compensation, subject to a credit of up to 90% of the federal tax for contributions made to a state unemployment fund which meets federal certification requirements. FUTA § 3302(a)(3), (c)(1).

FUTA permits states to exclude from covered employment services performed, *inter alia*, in the employ of a church or convention or association of churches. (App. 43-44).[2] In addition to the exemption for services in the employ of a church or a convention of churches, FUTA § 3309(b) permits exemption for services performed in the employ of certain governmental entities (§ 3309(b)(3)), rehabilitation facilities (§ 3309(b)(4)), work-relief or work-training programs (§ 3309(b)(5)) and penal institutions employing inmates (§ 3309(b)(6)). (App. 43-45). Contrary to Ms. Rojas' assertion, and as can clearly be seen in the exemptions enumerated in § 3309(b)(3)-(6), Congress in the 1970 amendment did not eliminate exemptions for all secular non-profits. This repeated charge by Ms. Rojas is clearly wrong.

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1. FUTA was originally enacted as part of the Social Security Act of 1935, 49 Stat. 639.

2. 26 U.S.C. § 3306(c)(8) excludes from the definition of "employment", "service performed in the employ of a religious, charitable, educational, or other organization" which is exempt from federal income tax under § 501(c)(3). However, states are required to extend coverage to certain of these services subject to the exclusions found in FUTA § 3309(b). (App. 43). References to "App." indicate the Appendix attached to the Petition for Writ of Certiorari.

The exemption of churches or conventions or associations of churches provided under the Rhode Island Employment Security Act exactly mirrors the language of the permissible exclusion provided under FUTA § 3309(b). In addition, as with the range of exemptions provided in FUTA, R.I.G.L. § 28-42-8 provides for exemption of other employers including rehabilitation facilities, work-relief or work-training programs, hospitals employing patients, employers of inmates of a custodial or penal institution, federal government employers, etc. (App. 46-49).

3. *Ms. Rojas and Her Claims*

Ms. Rojas was initially employed by The Salvation Army from 1988 to 1990, when she left to work for another charitable organization. Ms. Rojas was employed again by The Salvation Army from 1991 until her position was terminated. Her last day of employment was March 18, 1994. On April 13, 1994, Ms. Rojas filed with the DET for unemployment benefits, but was determined to be ineligible pursuant to R.I.G.L. Sections 28-44-11 and 28-42-8(4).

Ms. Rojas appealed that determination. A hearing was held before a DET Referee on May 12, 1994, who found that Section 28-42-8(4) does not violate the United States Constitution or the Rhode Island Constitution. The DET Board of Review "approved and confirmed" the decision of the Referee by decision dated August 16, 1994.

On or about September 9, 1994, Ms. Rojas initiated an action in the United States District Court for the District of Rhode Island, without naming The Salvation Army as a party defendant. In her federal complaint, Ms. Rojas sought, *inter alia*, a declaratory judgment that R.I.G.L. Section 28-42-8(4)

and FUTA § 3309(b) violate the United States Constitution and Article I, Section 3 of the Rhode Island Constitution. Ms. Rojas also filed a parallel state court action in Rhode Island which, by agreement, was deferred pending resolution of her federal court action.

In December 1994, The Salvation Army of Rhode Island, Inc. moved without objection to intervene in Ms. Rojas' federal court action on the grounds that it was a party to the DET proceedings and that its exemption under R.I.G.L. Section 28-42-8(4) was at issue in the proceeding.[3] The Salvation Army's motion was granted. In March 1995, Ms. Rojas moved to amend her complaint to join the Secretary of the United States Department of Labor on the grounds that Federal law (FUTA § 3309(b)), is inextricably "connected" with the Rhode Island State law at issue. That motion was also granted.

As there was no dispute as to the fact of Ms. Rojas' employment and termination by The Salvation Army and because the success or failure of Ms. Rojas' claims would depend on the District Court's determination of the constitutionality of the challenged statutory provisions, the District Court directed the parties to brief the contested constitutional issues.[4] Pursuant to the direction of the District Court, each defendant submitted memoranda in support of the dismissal of Ms. Rojas' claims. Following oral argument, the District Court entered judgment

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3. Although the original Defendant Intervenor was The Salvation Army of Rhode Island, Inc., because The Salvation Army, a New York corporation qualified to conduct its affairs in Rhode Island, was in fact the employer of Ms. Rojas, it is the proper party and was substituted as Defendant Intervenor.

4. The parties, however, *did not* agree to a purported "Joint Stipulation of Facts," as is asserted by Ms. Rojas. (Petition for Certiorari at p. 4).

for the defendants on June 10, 1996 upholding the constitutionality of the FUTA and R.I.G.L. exemptions.[5] On June 24, 1996, Ms. Rojas moved pursuant to Fed. R. Civ. P. 52(b) and Fed. R. Civ. P. 59 to alter, amend or vacate the judgment on the ground that the District Court's finding of a secular purpose with respect to the FUTA exemption was not supported by the record. The District Court denied Ms. Rojas' motion to amend the judgment.

Following the District Court's denial of her motion to alter, amend or vacate the judgment, Ms. Rojas appealed to the First Circuit. After post-argument submissions discussing this Court's decision in *Agostini v. Felton*, __ U.S. __, 117 S. Ct. 1997 (1997), and *City of Boerne v. Flores*, __ U.S. __, 117 S. Ct. 2157 (1997), the First Circuit issued its decision on October 9, 1997 affirming the District Court and concluding that the FUTA and R.I.G.L. exemptions do not violate the Establishment Clause. Subsequent to the decision of her motion for rehearing, Ms. Rojas filed her petition before this Court.

REASONS FOR DENYING THE WRIT

The only basis for Ms. Rojas' request for certiorari is her contention that the First Circuit's decision upholding the constitutionality of the FUTA and R.I.G.L. exemptions is contrary to prior Establishment Clause precedents of this Court

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5. The District Court also rejected arguments that it should (i) dismiss Ms. Rojas' claims pursuant to the Tax Injunction Act; (ii) abstain from exercising its jurisdiction over this case; and (iii) dismiss Ms. Rojas' claims against the Secretary of Labor for lack of standing. *Rojas v. Fitch*, 928 F. Supp. 155, 159, 161, 162 (D.R.I. 1996), *aff'd*, 127 F.3d 184 (1st Cir. 1997) (App. 20, 26, 28). The First Circuit did not reach these points in its decision upholding the constitutionality of the FUTA and R.I.G.L. exemptions. *Rojas v. Fitch*, 127 F.3d 184, 187 (1st Cir. 1997) (App. 6).

including last term's *Agostini* decision. This argument fails because the exemptions in question satisfy fully the test developed by this Court for review of legislation challenged on Establishment Clause grounds.

The FUTA and R.I.G.L. exemptions are consistent with this Court's Establishment Clause analysis under the long-standing doctrines of "reasonable accommodation" and "benevolent neutrality" toward religion found in the many exemptions afforded religious institutions by federal and state governments. *Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos*, 483 U.S. 327, 334-35 (1987); *Walz v. Tax Comm'n of New York*, 397 U.S. 664, 673 (1970). Similarly, the statutory exemptions, while incidentally benefiting religious institutions, have an "overall secular purpose" available to religious and non-religious institutions consistent with this Court's precedents. *See, e.g., Walz*, 397 U.S. at 672-73; *see also Texas Monthly, Inc. v. Bullock*, 489 U.S. 1, 14-15 (1989).

I.

THE FIRST CIRCUIT DID NOT MISREAD OR MISAPPLY AGOSTINI.

Agostini did not abandon but rather reaffirmed the criteria in *Lemon v. Kurtzman*, 403 U.S. 602 (1971) for challenging legislation on Establishment Clause grounds. *See* __ U.S. at __, 117 S. Ct. at 2010, 2015. What did change under *Agostini*, as recognized and applied by the First Circuit, were the criteria used to assess whether aid to religion has an impermissible effect. 127 F.3d at 187-88 (App. 8-9) citing *Agostini*, __ U.S. __, 117 S. Ct. at 2010-13. Specifically, this Court acknowledged that its more recent Establishment Clause jurisprudence

> abandoned the presumption . . . that the placement of public employees on parochial school grounds inevitably results in the impermissible effect of state-sponsored indoctrination or constitutes a symbolic union between government and religion,

117 S. Ct. at 2010; and, "departed from the rule . . . that all government aid that directly aids the educational function of religious schools is invalid." *Id.* at 2011. The First Circuit did not "ignore the essential teaching" or "sidestep" *Agostini*; it applied the *Lemon* and *Agostini* criteria to the FUTA and R.I.G.L. exemptions and found no violation of the Establishment Clause (*see* discussion, *infra*).

Ms. Rojas' criticism of the First Circuit's reading of *Agostini* rests on the false predicate that the FUTA and R.I.G.L. exemptions

> expressly uses religion as the touchstone and divides the universe of all non-profit employers into two categories — the religious (eligible for the government benefit) and the secular (not eligible).

(Petition for Certiorari at p. 9). This statement ignores the statutory language of the exemptions in question which provide on their face that the benefits of the exemptions apply to both religious and non-religious organizations and individuals: *e.g.*, various government employees, employees in rehabilitation facilities, work-relief or work training programs, certain types of youth services programs, and penal institutions employing inmates (*see* App. 43-45; App. 47-48). The First Circuit correctly found that all of the exemptions share a common secular purpose and provide benefits in a neutral manner complying with the *Lemon* and *Agostini* criteria. 127 F.3d at 187-88 (App. 8-9). Ms. Rojas offers no evidence to the contrary.

II.

THE FUTA AND R.I.G.L. EXEMPTIONS DO NOT ADVANCE OR INHIBIT RELIGION AND ARE CONSISTENT WITH THIS COURT'S ESTABLISHMENT CLAUSE PRECEDENTS.

A. Ms. Rojas Has the Burden of Overcoming the Presumption of Constitutionality Applicable to the FUTA and R.I.G.L. Exemptions

As the party challenging the FUTA and R.I.G.L. exemptions, Ms. Rojas has the burden of overcoming the statutes' presumption of constitutionality. *See Church of Scientology Flag Serv. Org. v. City of Clearwater*, 2 F.3d 1514, 1530 (11th Cir. 1993), *cert. denied*, 513 U.S. 807 (1994) citing *Edwards v. Aguillard*, 482 U.S. 578, 595 (1987); *Gillette v. United States*, 401 U.S. 437, 451-52 (1971). Ms. Rojas can only shift that burden by demonstrating by direct evidence that a religious purpose was a substantial or motivating factor in the enactment of the legislation in question. *Church of Scientology*, 2 F.3d at 1530. Her contention that the FUTA and R.I.G.L. exemptions on their face favor "religious non-profits over similarly situated secular non-profits" (Petition for Certiorari at p. 19), has no merit since the exemptions, on their face, apply to an array of individuals and institutions, not just religious institutions or employees.

Metzl v. Leininger, 57 F.3d 618 (7th Cir. 1995) does not alter Ms. Rojas' burden. The statute in *Metzl* on its face favored one religion, Christianity, over others by making Good Friday a school holiday. The FUTA and R.I.G.L. exemptions do not favor one religion or all religions on their face. Plaintiff in *Metzl* offered clear evidence that the purpose of the statute was to encourage Christian religious observances. Ms. Rojas, as noted

by the First Circuit, offered no evidence (except her bald assertions), that the FUTA and R.I.G.L. exemptions were intended to benefit religious groups to the exclusion of non-religious groups. 127 F.3d at 188-89 (App. 11-12). Contrary to Ms. Rojas' assertions (Petition for Certiorari at pp. 20-21), it is not the "job" of the state and federal government (or of The Salvation Army) to present a "defense" of a facial distinction in the FUTA and R.I.G.L. exemptions between religious non-profits and secular non-profits because the statutory exemptions, on their face, do not make such a distinction.

B. The FUTA and R.I.G.L. Exemptions Have a Valid Secular Purpose Which Does Not Benefit Religion Exclusively

Congress did not enact FUTA and Rhode Island its Employment Security Act for the purpose of promoting the religious beliefs and teachings of The Salvation Army or of any other religion. On their face, the statutes were enacted with the secular purpose of providing compensation to unemployed members of the work force. Similarly, the 1970 and 1976 amendments to the FUTA and R.I.G.L. exemptions were not passed to promote religion but rather to extend unemployment coverage to previously exempt employees (a clearly secular purpose), while retaining exemptions for a range of exempt employers, not exclusively religious groups. These exemptions, like the property tax exemptions in *Walz*, constitute reasonable and balanced attempts to guard against government hostility toward religion, just as the exclusive exemptions to religious organizations under Title VII allowed in *Amos* showed a legislative purpose to alleviate government interference with religious organizations' efforts to carryout their missions.

The First Circuit, as did the District Court, viewed the exemptions in the overall context of the federal and Rhode

Island unemployment benefits programs and concluded that the exemptions served the valid secular purpose of facilitating the administration of the unemployment compensation system. 127 F.3d at 188 (App. 9), 928 F. Supp. at 164 (App. 33-34). This secular purpose conclusion is in harmony with the purposes of both FUTA and R.I.G.L., the breadth of the exemptions found under both statutes, the lack of evidence of any overriding sectarian purpose, and the validity of similar exemptions such as the direct property tax exemption in *Walz*, the unemployment exemptions found constitutional by the New York Court of Appeals in *In re Claim of Klein*, 78 N.Y.2d 662, 668-69, 585 N.E.2d 809, 813 (1991), *cert. denied*, 504 U.S. 912 (1992); and similar exemptions under the District of Columbia's unemployment compensation plan upheld in *Konecny v. District of Columbia Department of Employment Service*, 447 A.2d 31, 35 (D.C. 1982).

Equally as important, the FUTA and R.I.G.L. exemptions foster an overall secular purpose by limiting the need of the state to entangle itself in religion through review of employment decisions grounded on religious rationales, a factor recognized by the First Circuit, 127 F.3d at 188 (App. 10), but ignored by Ms. Rojas.

C. The First Circuit's Decision Is Consistent With *Texas Monthly* and Other Cases Relied Upon by Ms. Rojas

The First Circuit did not "disregard" *Texas Monthly*. Instead, the First Circuit rejected Ms. Rojas' reading of *Texas Monthly* to require that the FUTA and R.I.G.L. exemptions (incidentally benefiting religion), "*must* grant a like benefit to every group that could also conceivably fall within the secular rationale for the exemption provision." 127 F.3d at 189 (App. 11) (emphasis in original). Ms. Rojas now contends that her challenge to the FUTA and R.I.G.L. exemptions was not based

on the "underinclusiveness" argument rejected by the First Circuit but is based on her contention that § 3309(b) of FUTA "preserves the non-profit charitable exemption expressly for one type of employee and one type only — the religious employee." (Petition for Certiorari at p. 10). This argument is flat out wrong. It not only ignores the secular purpose of the FUTA and R.I.G.L. statutes and exemptions (discussed, *supra*) but disregards the wording and plain meaning of the amended FUTA and R.I.G.L. exemptions which are *not* limited to religious organizations.

Section 3309(b) of FUTA exempts from mandatory state unemployment coverage services performed by employees of churches, ministers, state and local elected officials, legislatures, members of the judiciary, other specified government employees, employees working in certain rehabilitation facilities, participants in work-relief or work-training programs, inmates of custodial or penal institutions, and certain employees of small not-for-profit corporations. *See* App. 43-45. The R.I.G.L. exemptions parallel the FUTA exemptions and also extend to services performed by patients in hospitals, occasional, irregular or incidental services, golf caddies, commission-only real estate and insurance salesmen, students in co-op work programs, and workers on boats. *See generally* App. 46-50.

This is not a case like *Texas Monthly* where the exclusively religious exemption to the Texas sales and use tax granted to religious writings was effectively a state sponsorship of religious beliefs with no justifiable secular objective and no like benefits available for non religious groups. 489 U.S. at 15. The FUTA and R.I.G.L. exemptions do not promote the religious beliefs of The Salvation Army or of any other religion and are not intended to and do not apply exclusively to religious organizations as is readily apparent from the range of other organizations and individuals who are granted exemptions.

Ms. Rojas' reliance on *dicta* in *United States v. Lee*, 455 U.S. 252 (1982) (Petition for Certiorari at 17), does not support her Establishment Clause challenge to the FUTA and R.I.G.L. exemptions. *Lee* involved a challenge by an Amish employer on Free Exercise grounds to the imposition of social security taxes. While payment of the tax conflicted with the religious beliefs of the Amish employer, this Court upheld the constitutionality of the tax, finding an overriding public interest in maintaining the stability of the Social Security system. 455 U.S. at 260. The Court also upheld as a reasonable accommodation the exemption granted to self-employed Amish, and left it to Congress to expand that exemption. *Id.* at 260-61. In fact, Congress later expanded the exemption to include situations where both the employer and employee were members of a recognized religion which opposed the Social Security system. *See* 28 U.S.C. § 3127. There was no Establishment Clause analysis or holding in *Lee*. Indeed, a subsequent Establishment Clause challenge to the Social Security exemptions was rejected in *Droz v. Commissioner of Internal Revenue*, 48 F.3d 1120, 1124-25 (9th Cir. 1995), *cert. denied*, __U.S.__, 116 S. Ct. 698 (1996).

Finally, Ms. Rojas' reliance on *Jimmy Swaggart Ministries v. Board of Equalization*, 493 U.S. 378 (1990) (Petition for Certiorari at pp. 16-17), is equally misplaced. *Swaggart* involved a First Amendment challenge by a religious organization to the California sales and use tax on the sale of their publications. This Court rejected the Free Exercise challenge because the collection of the generally applicable tax did not impose a constitutionally significant burden on Swaggart's religious beliefs. 493 U.S. at 392.

The Establishment Clause analysis in *Swaggart* focused on the "entanglement" prong of the *Lemon* test. The Court found that the administrative and record keeping burdens associated

with payment of the sales and use tax did not rise to a constitutionally significant level. There was no "excessive entanglement," particularly since the collection and payment of the tax did not require the State to inquire into Swaggart's religious motivation for selling or purchasing religious items or into the religious content of those items since "the materials are subject to the tax regardless of content or motive." 493 U.S. at 396.

The FUTA and R.I.G.L. exemptions do not lead to "excessive entanglement." The exemptions are focused on the status of the employer and make no reference to the nature of the services performed by church employees. *See, e.g., St. Martin Evangelical Lutheran Church v. South Dakota*, 451 U.S. 772, 784 (1981). Consequently, as in *Swaggart*, there is no need for any government scrutiny into the nature of the employment relationship or the secular/religious nature of the services provided which might lead to "excessive entanglement." *See, e.g., Konecny, supra.* Indeed, as the District Court and First Circuit found, the FUTA and R.I.G.L. exemptions decrease the entanglement of government with religious affairs. 127 F.3d at 188 (App. 10), 928 F. Supp. at 164 (App. 33-34).

III.

THE EXEMPTIONS ARE REQUIRED TO PRESERVE THE SALVATION ARMY'S FIRST AMENDMENT FREE EXERCISE RIGHTS.

The FUTA and R.I.G.L. exemptions for religious organizations avoid "excessive government entanglement" with religion proscribed under the Establishment Clause and, equally as important, serve to prevent government interference with The Salvation Army's free exercise of its religious beliefs. As with the exemptions to § 702 of the Civil Rights Act of 1964 found

constitutional in *Amos, supra,* 483 U.S. at 339, the FUTA and R.I.G.L. exemptions provide a reasonable accommodation of religion not an endorsement of religion.

Under I.R.C. § 3304(a)(10) and R.I.G.L. § 28-44-18, unemployment compensation benefits will be denied where the discharge of an employee is for "proved misconduct connected with [the employee's] work." In the case of a church, such as The Salvation Army, the misconduct that would prompt the discharge could be non-compliance with the church's religious principles and practices. This is a "uniquely subjective determination" as applied to a religious organization which may differ significantly from the determination to discharge an employee made by a non-religious organization, thus leading to unnecessary entanglement by the government with a church's religious mission. *See, e.g., Konecny, supra,* 447 A.2d at 37, n.5; *Grace Lutheran Church v. North Dakota Employment Bureau,* 294 N.W.2d 767, 773-74 (N.D. 1980).

The Salvation Army's soup kitchens, rehabilitation centers, counseling centers, alcohol recovery programs and related activities are not just charitable works but are a central part of The Salvation Army's religious mission. The imposition of an unemployment tax on The Salvation Army for its social workers would interfere in this essential religious mission and would create a significant restraint upon The Salvation Army's exercise of its religious beliefs, much like the burdens on religion found unconstitutional in *Murdock v. Pennsylvania*, 319 U.S. 105 (1943) and *Follett v. McCormick*, 321 U.S. 573 (1944), but unlike the burden of having a third party pay a sales tax on the purchase and sale of religious publications in *Texas Monthly*.

The exemptions in FUTA § 3309(b) and R.I.G.L. § 28-42-8(4) preserve The Salvation Army's ability to make religiously based employment decisions free from government

intrusion. If the Rhode Island DET were to require The Salvation Army or any other religious organization to provide unemployment insurance benefits to employees discharged for religious reasons, the rights of that church or religious organization under the Free Exercise Clause would be violated. If the DET were to accept discharge for religious reasons as "misconduct" which would justify denial of unemployment insurance benefits, the DET and the courts would be confronted with making a determination as to whether the discharge was truly for religious reasons, necessarily becoming entangled in the religious principles and policies of The Salvation Army and other religious organizations. Such entanglement would run afoul of the Establishment Clause. Consequently, the inclusion of the FUTA and R.I.G.L. exemptions is constitutional and the elimination of these exemptions would clearly be unconstitutional.

CONCLUSION

The First Circuit's decision is in harmony with this Court's Establishment Clause precedents. Ms. Rojas has failed to show otherwise and has offered no compelling reason why certiorari should be granted. The Salvation Army respectfully submits that this Court should reject Ms. Rojas' petition for a writ of certiorari.

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